IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1778 OF 1991

Smt. Shantabai w/o Dada Koli
residing at Samdoli,
Taluka Miraj, Dist.Satara .. Petitioner.
Vs
1. Bhujgonda Adagonda Patil
since deceased, by his heirs--
(a) Smt.Tarabai Shamgonda Patil ..
(b) Balgonda Shamgonda Patil ..
(c) Adgonda Shamgonda Patil ..
Nos.2(a) to 2(c) residing at
Nimshirgaon, Taluka Hatkanangale,
Dist. Kolhapur
(d) Smt.Shantabai Appasaheb Patil
residing at Shedbal, Taluka
Athahi, District Belgaum ..
(e) Smt.Suman Balasaheb Patil
residing at Nandre, Taluka Miraj
District Sangli ..
3. Smt.Champabai Tatya Patil
since deceased by her heir
(a) Smt.Pushpawati w/o
Mahendra Doddanwar, residing at
Nendwadi, District Belgaum ..
4. Smt.Antubai Dasharath Koli
residing at Samdoli,
Taluka Miraj, District Sangli ..
5. Smt.Akkatai Appal Koli
residing at Alate,
Tal. Hatkanangale
District Kolhapur .. Respondents.

Mr G.R.Rege with Mrs Shakuntala Mudbidri, for the petitioner.
Mr.T.S.Ingale, for respondent no.1,2(b),2(c), 3(a).
Ms A.R.S.Baxi, for respondent no.4.

CORAM : D.B.BHOSALE,J.

DATE : 6th & 7th October, 2004.

ORAL JUDGMENT:

1. This petition filed by the tenant under

Article 227 of the Constitution is directed against the judgment and order dated 20.12.1990 rendered by Maharashtra Revenue Tribunal (for short "MRT") by which respondent nos.1 to 3-landlord's revision has been allowed and the order dated 2.2.1987 passed by the Sub-Divisional Officer has been set aside. As a result thereof the order dated 10.9.1962 passed by the A.L.T. in the proceedings initiated by the landlord under section 29 read with 14, 25 and 32-P of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "Tenancy Act") stood confirmed by the MRT.

2. A short yet important question involved in the instant writ petition is as to whether the tenant in possession of Inam Lands, which are governed by the provisions of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short 'Act of 1962'), requires to exercise the right conferred under section 32-O of the Tenancy Act in the prescribed manner and within the period specified therein, from the date of regrant and if he fails to do so whether such land would vest in the Government and is liable to be disposed of under section 32-P, or if the lease of such land was subsisting on tillers' day, whether the tenant is, straightway, entitled to invoke the provisions

of section 32G on such land being regranted in favour of the landlord.

3. These proceedings arise out of the application filed by respondent nos.1 to 3 - landlords (for short 'the landlord') on 10.10.1977 terminating the tenancy of the petitioner-tenant (for short 'the tenant') by giving notice dated 31.7.1974 on the ground of default in payment of rent from the years 1965-66 till 1972-73. It was also contended in the said application that the tenant failed to exercise her right to purchase under section 32-O of the Tenancy Act within one year from the date of regrant of the land in favour of the landlord. Admittedly, the land in question was Inam land and it was governed by the provisions of the Act of 1962. The land was regranted under section 5 of the Act of 1962 to the landlord on payment by him to the State Government of the occupancy price. According to the landlord, since the tenant failed to exercise her right under section 32-O of the Tenancy Act, they filed an application under section 29 read with sections 14,25 and 32-P of the Tenancy Act seeking possession of the land on the ground of default. Though the contention urged in respect of default was rejected by the ALT vide order dated 10.9.1982,

he declared the sale ineffective holding that the tenant failed to exercise his right in the prescribed manner and within the period specified in section 32-O.

3.1. The tenant thereafter carried the matter in appeal before the Sub-Divisional Officer (for short "SDO") who by order dated 2.2.1987 allowed the appeal partly. The SDO set aside the order of ALT declaring sale ineffective and remanded the matter for fresh enquiry to find out whether the tenant committed any default in payment of arrears of rent. The order of SDO was challenged by the landlord in revision before the MRT. The MRT allowed the revision application holding that the provisions of section 8 of the Act of 1962 and proviso appended thereto in particular would come in play on the date of regrant, and in view thereof the tenant ought to have exercised his right within one year as contemplated in section 32-O of the Tenancy Act and since that was not done, the tenant is not entitled to purchase the land and action under section 32-P is liable to be taken. That order of the MRT is impugned in the present writ petition.

4. I heard the learned counsel appearing for the parties for quite sometime. Perused the relevant provisions of the Tenancy Act, Act of 1962 and other material placed before me. Mr.Rege, learned counsel for the petitioner, at the outset, submitted that the impugned order suffers from error of law which is apparent on the face of record on the following ground. The tribunal has failed to consider that the date of compulsory purchase of the said land in question was merely postponed by statute upto the date of regrant and once the land was regranted in favour of the landlord, the ministerial act of fixation of purchase price in favour of tenant must follow. In other words, on the date of regrant the tenant becomes deemed purchaser and, therefore, the question of exercising right under the provisions of section 32-O of the Tenancy Act does not arise in the instant case inasmuch as the lease was subsisting on 1.4.1957.

4.1 On the other hand Mr.Ingale, learned counsel for the landlord submitted that keeping in view the provisions of section 8 of the Act of 1962, the provisions of section 32-O of the Tenancy Act is applicable to this case and the tenant was

under an obligation to give an intimation to the landlord in the prescribed manner within one year from the commencement of such tenancy i.e. the date on which the land was regranted on payment of occupancy price to the landlord. He further submitted that the tenancy in instant case is deemed to have commenced from the date of regrant and, therefore, the provisions contained in section 32-O of the Tenancy Act are attracted. Mr.Ingale further submitted that in view of the notice of purchase having not been served by the tenant on the landlord within a period of one year from the date of regrant as required by section 32-O of the Tenancy Act, tenant has lost his right to complete statutory purchase of the land in question.

5. It would be advantageous to reproduce the provisions of section 32-O of the Tenancy Act and section 8 of the Act of 1962, in order to appreciate the contentions urged by the learned counsel appearing for the parties better.

. Section 32-O of the Tenancy Act reads thus:

> "32-O. (1) In respect of any tenancy created after the Tillers' day by a

landlord (not being a serving member of the armed forces) notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

(2) The provision of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1)".

. Section 8 of the Act of 1962 reads thus:

"8. If any watan land has been lawfully

leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this Part, be governed by the provisions of that law:

. Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under section 5 or 6 or 9 as the case may be".

5.1. Proviso to section 8 of the Act of 1962 needs to be interpreted in the light of the main provisions of section 8. The main provision clearly provides that if watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land

and his tenant or tenants shall, be governed by the tenancy law subject to the provisions of the Act of 1962. The proviso appended to section 8 provides that for the purposes of application of the provisions of the relevant tenancy law i.e. the Tenancy Act in the present case, in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under section 5 or 6 or 9 as the case may be. It is against these provisions of section 8 of the Act of 1962, I would now like to consider that in present case whether the lease commenced on the date of regrant and, therefore, the tenant ought to have exercised right contained in section 32-O of the Tenancy Act when the land in question stood regranted in favour of the landlord on 10.9.1969.

5.2 It is clear from the provisions of section 8 of the Act of 1962, the provisions of the Tenancy Act becomes applicable to the lease forthwith i.e. from the date of regrant. In other words, the provisions for implementation of compulsory purchase of the land contained in section 32-G of the Tenancy Act could not be availed of by the tenant until the land is being regranted in favour

of the landlord. In my opinion, therefore, by operation of law i.e. the Act of 1962, the date of compulsory purchase of the land and fixation of purchase price under section 32 and 32-G simply stands postponed by the statute upto the date of regrant. It would not be correct to interprete the proviso appended to section 8 to mean that the landlord creates fresh tenancy in favour of the tenant on date of payment of occupany price and, therefore, the provisions of section 32-O of the Tenancy Act would have an application in such case. Plain reading of section 32-O show that it cannot be applied to the cases where the land was in possession of the tenant on 1.4.1957 and such lease was subsisting all throughout. In other words, section 32-O applies only to tenancies created after the tillers day. The proviso to section 8 of the Act of 1962, therefore, will have to be read to mean that it creates a statutory legal fiction for an extremely limited purpose i.e. for the purpose of fixing of purchase price in respect of statutory purchase and for the said limited purpose, the land is deemed to have been leased from the date of regrant as held by this court in **Kallawwa Shattu Patil and Others Vs. Yallappa Parashram Patil and Anr. 1992 Mh.L.J. 34**. It is thus clear that it

does not follow therefrom that the landlord has created a lease in respect of the said land after 1.4.1957 i.e. from the date of regrant. The old lease never comes to an end and/or the relationship of landlord and tenant does not come to an end on introduction of the Act of 1962 nor indeed there is any legal justification for the theory that on the cesser of that relationship, a new relationship of landlord and tenant came into existence between the parties so as to attract the application of section 32-O. The old lease, therefore, cannot be treated as new contract of lease from the date of regrant. In other words, the deemed date of commencement of pre-existing lease for the limited purpose set out in the proviso to section 8 of the Act of 1962 does not and cannot bring the case within the ambit of section 32-O of the Tenancy Act.

5.3. In the present case the tenant was lawfully cultivating the land on 1.4.1957 and also on the appointed day and that his rights are governed by the Tenancy Act. As a matter of fact the case set up by the landlord is that the rent was not paid by the tenant from the years 1952-1953 to 1964-65 for which he was required to file the civil suit for recovery of the rent. Admittedly, the land stood

regranted in favour of the landlord on payment of the occupancy price on 10.9.1969. Therefore, merely the date of compulsory purchase of the land in question was statutorily postponed to the date of regrant. It is, therefore, impossible to hold that section 32-O of the Tenancy Act is applicable in such situation where the lease has been subsisting throughout since prior to 1.4.1957 and has not been created by the landlord for the first time on the date of regrant. In any case, it cannot be said that the fresh tenancy was created by the landlord after the land was regranted in his favour on 10.9.1969. As a matter of fact the relation between the petitioner and the respondent as tenant and landlord never came to an end. In other words there was no new contract of the lease arrived at between them. In the circumstances I have no hesitation in holding that the Maharashtra Revenue Tribunal committed grave error of law in holding that the tenant failed to exercise his right within stipulated time after the order of regrant in favour of the landlord as contemplated under section 32-O of the Tenancy Act.

6. In the result, Rule is made absolute. The judgment and order dated 20.12.1990 is quashed and

set aside. In view of the aforesaid observations the judgment and order dated 2.2.1987 also stands quashed and set aside. The relevant tenancy authority may proceed to decide the purchase price under section 32-G of the Tenancy Act. No costs.

(D.B.Bhosale, J.)